

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EMANUEL DAVID M. WATSON,
INDIVIDUALLY AND AS NEXT
FRIEND OF L. T.,
A MINOR CHILD, AND D.
W.,

Plaintiffs,

VS.

Civil Action No. 3:06-cv-00323

TIMOTHY WINTLE-NEWELL,
INDIVIDUALLY AND AS A POLICE
OFFICER WITH THE GALVESTON
POLICE DEPARTMENT, UNKNOWN
GALVESTON POLICE OFFICERS #1,
2, 3 AND 4, INDIVIDUALLY AND AS
POLICE OFFICERS WITH THE
GALVESTON POLICE DEPARTMENT,
UNKNOWN PEACE OFFICER #5,
INDIVIDUALLY AND AS AN AGENT/
EMPLOYEE OF THE RESIDENCE AT
WEST BEACH APARTMENTS, THE
RESIDENTS AT WEST BEACH
APARTMENTS, ROBERT PIERCE,
INDIVIDUALLY AND IN HIS
FORMER CAPACITY AS CHIEF OF
POLICE OF THE GALVESTON
POLICE DEPARTMENT; KENNETH
MACK, INDIVIDUALLY AND IN HIS
CAPACITY AS CHIEF OF POLICE OF
THE GALVESTON POLICE
DEPARTMENT, THE GALVESTON
POLICE DEPARTMENT AND THE
CITY OF GALVESTON,

Defendants.

UNITED STATES COURT
SOUTHERN DISTRICT OF TEXAS
FILED

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Michael A. Smith, Clerk of Court

MOTION FOR REHEARING

TO THIS HONORABLE UNITED STATES DISTRICT COURT:

NOW COMES Plaintiffs, Emanuel M. Watson, et al, and files this Motion for Rehearing and, as support for the relief requested, would respectfully show this Court the following:

1. This case was originally filed in Galveston State District Court and was removed to the Southern District, Galveston Division on May 18, 2006. (Doc.1)
2. Counsel herein had last appeared before the Honorable Samuel B. Kent in January 2003, when she was forced to file Motions to Withdraw in two (all) cases she had pending in his court due to sever health conditions preventing her from effectively practicing law at that time. She was hospitalized, for almost a month each time, within weeks surrounding the hearing on her Motions. Upon her release from her first hospitalization she filed her a Motion for Continuance of an upcoming trial setting (in mid January) and, in the alternative, requested leave to withdraw due to her declining health. Her Motion was Denied.
3. On or about January 6, 2003, counsel filed yet another, emergency Motion to Continue the case or to allow her withdrawal, which, in an air of anger and consternation, was begrudgingly granted by the Court. Counsel was, in truth and fact, unable to proceed as represented. In fact, within weeks after the Order allowing her withdrawal, she was again admitted, this time comatose, to Methodist hospital, where she was placed on life support, and remained for almost a month (in February through March of that same year).
4. However, her repeated Motions for an abatement and/or to withdraw from those cases came between the first and second hospitalization and, while they were filed immediately and then again on two weeks after her release from the

first hospitalization, they also forced a continuance of the first trial setting in one of the cases, which was set for mid January 2003.

5. Counsel has not returned to the Southern District, Galveston Division, since that time, until she received Defendant's Notice of Removal, filed on May 18, 2006 in this case. (Doc. 1) The Certificate of Service was filed on May 22, 2006. (Doc 4.)
6. Upon receiving the Notice, counsel immediately contacted Ms. Cathy McBroom, Judge Kent's coordinator, and advised her of the prior situation, asking if the court wished to see her face to face before she proceeded forward in representing her client. Shortly thereafter, she was called and advised that Judge Kent had stated she (counsel) could not appear (or file) anything in his court at that time, pending certain conditions.
7. On July 19, 2003, Counsel filed a Motion to Abate this case pending resolution of the matter. (Doc. 8) However, between receiving Judge Kent's admonition and the filing of her Motion, defense counsel filed the Motion to Dismiss (Doc. 6) and Memorandum (Doc. 7) which formed the basis of this courts Memorandum and Order. (Doc. 15).
8. Between the filing of the Motion to Abate and Judge Kent's recusal, a series of hearings ensued at which it was clear that counsel would not be allowed to represent her client (at all, much less effectively) before Judge Kent. (Doc. 10 and 11)
9. Eventually, on September 18, 2006, the Honorable Samuel B. Kent recused himself from the case, retaining any scheduling deadlines, which had not yet

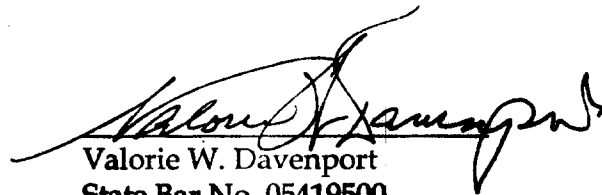
been set, and *vacating all setting then in effect*. (Doc 12)

10. Also, pursuant to that same order, the matter was referred to the Southern District, Houston Division, and assigned to the Honorable Kenneth Hoyt, presiding. (Doc. 12)
11. Upon his receipt, The Honorable Kenneth Hoyt similarly recused himself, and the matter was reassigned to this Honorable court on or about September 21, 2006. (Document 13).
12. Counsel cooperated in the preparation of the joint case management plan, as required; however, she was then currently in the middle of a four day contempt procedure (where she represented the Movants) before the Honorable Kenneth Hoyt¹, and was unable to appear at the court's scheduling conference as noticed, on October 18, 2006. However, she had been informed prior to hearing that, due to the agreements reached with opposing counsel, her attendance would not be required.
13. The following day, October 19, 2006, this Court signed the now complained of Memorandum and Order dismissing her client's case. (Doc.15).
14. Based on the aforementioned facts and history, counsel respectfully request a rehearing of said Motion to Dismiss and reinstatement of her client's case. She also request time to properly and fully respond to said Motion so that full consideration may be give and justice can be served thereby.
15. WHEREFORE, PREMISES CONSIDERED, Movant prays that this Request for

¹ Fergus Ginther, et al v. Texas Commerce Bank, Cause No. 85-6191

Rehearing be granted, that the present Memorandum and Order be withdrawn and that she be given a full opportunity to properly brief and respond to the Defendant's previously filed Motion to Dismiss. Movant also prays for all other relief, both general and special, whether in law or in equity, that Plaintiff is entitled to receive.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to the following counsel of record by First Class Mail on this the 2nd day of November, 2006.

William S. Helfand
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Valorie W. Davenport